

SAMUEL LORD.

[To accompany bill H. R. No. 467.]

MAY 28, 1842.

Mr. RAYNER, from the Committee on Commerce, submitted the following

REPORT:

The Committee on Commerce, to which had been referred the memorial of Samuel Lord, make the following report :

The memorialist sets forth that, in the month of November or December, 1818, he became security on a bond to the United States, for duties payable by Howe & Fitch, merchants of Charleston, South Carolina, to the amount of \$1,923 75, which bond became due the 23d August, 1819; that, about the time the said bond fell due, the principals therein (to wit: the said Howe & Fitch) became insolvent, and made an assignment of their property to the trustees for the payment of their debts, that to the United States having a priority of payment; that the effects of the said Howe & Fitch, which went into the hands of the said trustees, and were by them converted into money, were fully sufficient to satisfy the said bond; and that the collector of the port of Charleston, who then had the bond, was aware of these facts, and expressed his opinion that the bond would be paid out of that fund.

The memorialist further states that, at nearly the same time, under the pressure of embarrassments to which mercantile pursuits were then subject, he was also compelled to make an assignment of his effects to a trustee for the payment of his debts; that, when he did so, he called upon the collector to ascertain from him whether it was necessary for him to make any provision for this debt to the United States, for which he was surety, and was informed by the collector that he did not consider it necessary that he should do so, inasmuch as the property of Howe & Fitch was liable, in the hands of the trustees, and was deemed sufficient; that, with this assurance, and from a belief that the United States were sufficiently provided for, and not with any view to defraud them, the memorialist did not return the United States in the list of his creditors, but made out a schedule of *his own* creditors, to whom the entire avails of his effects were, in perfect good faith, distributed by his trustee; that the said trustee, in the discharge of his duty, gave notice of his purpose to make distribution, and, by a public advertisement, called on all the creditors of the memorialist to state and exhibit their claims; and that no claim on behalf of the United States was presented. The memorialist further states that he had every reason to suppose, and did suppose, until seven or eight years after that time, that the said bond of Howe & Fitch to the United States was paid; that then it appeared that Shackleford & Rogers, the trustees of

Howe & Fitch, though they had collected much more than was sufficient to discharge the bond out of the effects of the said firm in their hands, had nevertheless applied it to their own use, having failed to pay the United States, although entitled by law to be first paid; that suit was then brought by the United States against the memorialist, as surety on the said bond, and a judgment recovered, but for many years the judgment was allowed to slumber without any proceedings being had thereon; that orders have been given by the proper department of the Government to the attorney of the United States at Charleston to revive the judgment, and that the only indulgence extended to the memorialist is, that execution shall be stayed till the end of the present session of Congress, to the end that he may petition Congress for that relief which the Executive department of the Government has not, by law, the power to grant.

The memorialist prays either to be relieved from this debt altogether, or to be relieved on the compromise of his paying one thousand dollars, stating, at the same time, that the latter sum is as much, owing to his reduced circumstances, as, by the aid of friends, he can possibly pay.

From the following certificates and correspondence, which have been referred to the committee, in company with the petition of the memorialist, it will appear that the facts, as set forth in the petition of the memorialist, are, in the main, established. The memorialist prays that he may be either released from this obligation, incurred as surety of Howe & Fitch, altogether, or that, in consideration of the facts set forth in the memorial, the hardship of the case, and his own reduced circumstances, he may be allowed to compromise with the United States, by the payment of one thousand dollars.

THE STATE OF SOUTH CAROLINA, *Charleston district*:

Personally appeared before me, John Phillips, one of the justices of the quorum for the parishes of St. Philip and St. Michael, in the district and State aforesaid, Silas Howe, one of the late firm of Howe & Fitch, who, being sworn, deposeth: That some time in the year 1819 the said firm of Howe & Fitch failed; that they made an assignment of all their estate and effects for the benefit of their creditors, and appointed Rogers & Shackelford their assignees—John B. Rogers was the acting assignee; that, in their deed of assignment, a provision was made for the payment of all their custom-house bonds, and deponent avers that the assets assigned were more than sufficient to have paid all their debts due the Government, and, if the assigned estate had been well or even tolerably well managed, all the creditors would have been paid a handsome dividend; that Robert Benthem, Esq., drew the said assignment, and, at the time, was in the office of the United States district attorney, deponent believes as a copartner, who carried the assignment to Mr. Theus, the then collector, who was so satisfied that there was more than enough to pay all the custom-house bonds, that he directed that indulgence in the payment of these bonds should be granted, if judgments were confessed: and judgments were accordingly confessed on all the bonds, including the one on which Samuel Lord was security, who also confessed judgment. And this deponent further deposes that, on an examination of their affairs, in the hands of their said assignees, they ascertained that about three thousand dollars had been collected, the property sacrificed, the bonds in the

custom-house unpaid, and the books of the said Howe & Fitch lost or wilfully misplaced by the said assignees; that, about this time, Rogers & Shackleford failed, and the said Howe & Fitch, being greatly dissatisfied with the conduct of the said Rogers & Shackleford, who had most grossly abused the trusts confided in them, by sacrificing the property, wasting the assets, and refusing to account for the moneys which they had collected, removed the papers and accounts not yet collected from their control and management, and placed them in the hands of Doddridge Crocker, Esq., a respectable merchant in this city, who did all that could be done to effect a final settlement of this estate; that the balance collected was about three thousand dollars, the principal part of which was paid on the said custom-house bonds; that the amount of the assets assigned were about one hundred thousand dollars: the debts to be paid were about seventy-five thousand dollars.

SILAS HOWE.

Sworn before me this 18th November, 1839.

JOHN PHILLIPS, Q. U.

THE STATE OF SOUTH CAROLINA, *Charleston district*:

Personally appeared before me, John Phillips, one of the justices of the quorum for the parishes of St. Philip and St. Michael, in the district and State aforesaid, Doddridge Crocker, who, being sworn, deposeth: That some time in the year 1821 a few papers and some accounts belonging to the assigned estate of Howe & Fitch were placed in his hands by these individuals, to be collected and paid away in the order directed by their assignment. The original assignees were John B. Rogers and William Shackleford, of the firm of Rogers & Shackleford, who had failed; and from this circumstance the further administration of the assigned estate of Howe & Fitch was, with their consent, intrusted to deponent's management. In Howe & Fitch's deed of assignment, a provision was made for the payment in full of all debts by them due the Government, including particularly their custom-house bonds. By an account among the papers delivered to deponent in John B. Rogers's handwriting, (as he was told and believes,) who was the acting assignee, it appeared that a balance of twenty-seven hundred and twenty-eight dollars and eighty-five cents was due to the said assigned estate of Howe & Fitch from the said assignees, Rogers & Shackleford, being amounts which they had collected, and for which they have never accounted. Deponent collected all that he could of the accounts intrusted to his care, amounting to about three thousand dollars, which were appropriated principally to paying the custom-house bonds of Howe & Fitch. Deponent does not know what has become of Shackleford; Rogers is an insolvent, an unfortunate cripple, unable to support or assist himself, dependant on charity for his daily bread.

D. CROCKER.

Sworn before me this 18th November, 1839.

JOHN PHILLIPS, Q. U.

UNITED STATES OF AMERICA.

THE STATE OF SOUTH CAROLINA, *Charleston district* :

Personally appeared before me, John Phillips, one of the justices of the quorum for the parishes of St. Philip and St. Michael, in the district and State aforesaid, Samuel Lord, who, being sworn, deposeth : That, at the time of his failure, and previous to making an assignment, being anxious about the payment of the custom-house bond of Howe & Fitch, on which he was security, he, through his friends, consulted Major Theus, the then collector of this port, on the propriety of making some adequate provision for the payment of this bond, but that his conduct on this subject was influenced by the opinion of the collector, who, from an examination of the assignment of Howe & Fitch, believed that the assets therein assigned were more than sufficient to pay all their Government debts; and this deponent avers that this was the reason why it was not made a preferred debt in his assignment for the benefit of his creditors. And deponent further deposes that he was always under the belief that the said bond of the said Howe & Fitch had been fully paid and discharged, until very recently he was called on or reminded that the judgment he had confessed remained against him unsatisfied.

SAMUEL LORD.

Sworn before me this 2d January, 1840.

JOHN PHILLIPS.

OFFICE U. S. ATTORNEY, SO. CA. DISTRICT,
July 29, 1841.

SIR: I have the honor to acknowledge the receipt of your letter of inquiry respecting Samuel Lord, surety of Howe & Fitch, and a proposition to pay \$1,000 in satisfaction of the judgment against him. I herewith enclose copies or extracts from a correspondence on this subject, commenced by H. D. Gilpin, Esq., Solicitor of the Treasury, 14th October, 1839, and turned over to me by my predecessor, (now Judge Gilchrist,) by which you will perceive that a larger sum than the present offer was made in November, 1839. The only fact to be added to my statement of that date, herewith enclosed, is this, that the firm in which Mr. Lord was a partner was dissolved on the first day of this month. When I saw the dissolution announced in the public prints, I supposed this debt to the United States had induced it, and Mr. Lord subsequently assured me that he had dissolved because he was too much harassed by his apprehensions from this claim. It is impossible for me to arrive at any conclusion as to his share of the profit in this concern; but, believing Mr. Lord to be a just man, and satisfied that he had at least been living upon his share of the profits, I concluded he would not have taken such a step if the business had been profitable enough to have enabled him to pay this debt and maintain himself. I know of no reverses befalling the late firm of Lord & Stocker, since November, 1839, but presume, from the general state of trade, their business could not have proved as profitable since as it was before that time.

I believe Mr. Lord has friends who would not suffer him to lie in jail, if it required the whole debt, principal and interest, to be raised in order to liberate him; but I do not know of any property of his upon which a

levy could be made, to satisfy the execution against him, and should deeply regret it if I should be the instrument of wringing from the sympathies of his friends the means of satisfying this debt. And I beg leave to say, in answer to your inquiry "whether it be not expedient, in my opinion, to accept the proposition of \$1,000 in discharge of the judgment," that, waiving all considerations of a public nature, which are beyond my province to enter upon, as considered merely as a question of expediency between debtor and creditor, it is, in my opinion, expedient to accept the proposition to pay \$1,000 (cash) in discharge of the judgment against Mr. Lord; and I verily believe that, unless recourse be had to the unjust expedient of forcing his friends to relieve him from confinement, as much cannot be made by any compulsory process.

I have not thought it necessary to send copies of the affidavits of S. Howe and D. Crocker, alluded to in the extract of my letter of November, 1839, as I presume the originals are within your reach, if required.

Very respectfully, yours,

EDWARD McCRADY,
U. S. Attorney, South Carolina District.

C. B. PENROSE, Esq.,
Solicitor of the Treasury, Washington City.

OFFICE OF THE SOLICITOR OF THE TREASURY,
March 16, 1842.

SIR: I have received your letter of this date relative to the petition of Samuel Lord to be relieved from his responsibility as surety on a duty bond of Howe & Fitch.

In reply, I have the honor to state that, after the report made to this office by the district attorney, in his letter of 29th July last, to which you refer, the proposition of Mr. Lord to compromise by the payment of \$1,000 would have been accepted if the authority to do so had been vested in this office by law. I have no knowledge on the subject, however, other than what is found in the correspondence, a copy of which was furnished to the agent of Mr. Lord, and is doubtless in possession of the committee, and am aware of no circumstance that has occurred to change the aspect of the case as there presented.

Very respectfully,

CH'S B. PENROSE,
Solicitor of the Treasury.

Hon. K. RAYNER,
House of Representatives.

STATE OF MARYLAND, *City of Baltimore, sc :*

Daniel H. Hall, of the city of Baltimore, being duly sworn on the Holy Evangely of Almighty God, deposeth and saith: That, from the year eighteen hundred and seventeen until the year eighteen hundred and twenty-eight, he was a resident of, and doing business as a merchant in, Charleston, South Carolina; that he knew Samuel Lord, who, in the early part of his residence there, was a respectable merchant of that city,

and subsequently in the employ of this deponent, who, from the several conversations had on the subject of his failure and insolvency, verily believes that his assignment was made, predicated on the strictest principles of integrity and honor, and a full conviction that the claim due to the United States, by virtue of his security on bonds for Howe & Fitch, had been or would be liquidated by the securities rendered by that house for the payment of their debts; and this conviction or impression was made (as this deponent understood from Mr. Lord) from the collector himself, and was the reason his assignment did not provide for that liability. This deponent, from a perfect knowledge of Samuel Lord, believes that his high sense of honor, his moral character, and strict integrity, entitle him to full faith and credit. In testimony whereof, I have hereunto set my hand and affixed my seal this thirtieth day of January, eighteen hundred and forty.

DANIEL W. HALL.

THOMAS FURLONG,

*Justice of the Peace of the State of Maryland,
in and for the city of Baltimore.*

OFFICE OF THE SOLICITOR OF THE TREASURY,
February 22, 1840.

SIR: It appears from a printed report of outstanding bonds for duties executed at the custom-house in Charleston, made to Congress by the First Auditor of the Treasury on the 5th of July, 1838, that a bond of J. Fitch, dated the 23d November, 1818, with S. Lord as surety, for \$1,569 97, was still unpaid. Upon having his attention called to this bond by the Solicitor of the Treasury, the district attorney reported, on the 8th of October, 1839, that "J. Fitch is hopelessly insolvent. S. Lord, the surety, a member of a mercantile firm now doing business in the city of Charleston, may have realized something out of the property of that concern, but the offices of record do not show any property held in his own name. Expectation may, however, be entertained of some collection on account of this debt."

Upon the receipt of this report, the district attorney was instructed to revive the judgment and collect the debt, if property could be found to make it.

The records of this office furnish no evidence of the proceedings had in this case from the year 1818 to 1839. No reports were required to be made in such cases until the establishment of the office of the Solicitor of the Treasury in 1830. If any proceedings were had in the case, they can be obtained only by applying to the clerk of the district court at Charleston, South Carolina.

Very respectfully, yours,

M. BIRCHARD,

Solicitor of the Treasury.

D. A. HALL, Esq., *Washington City.*

OFFICE OF THE SOLICITOR OF THE TREASURY,

December 4, 1839.

SIR: Your letter of the 20th ultimo, requesting a suspension of legal proceedings against S. Lord, surety on the custom-house bond of J. Fitch, of Charleston, South Carolina, has been received. Under the circumstances stated, I have, by letter of this date, to the district attorney at Charleston, of which I enclose a copy, instructed him, after the judgment shall be revived, to suspend execution on the same till the close of the present session of Congress, upon the payment of costs, to afford an opportunity to Mr. Lord to petition that body for relief. I have to request that you will advise Mr. Lord of this indulgence, and inform this office of the steps which he may take. Should he not apply by petition to Congress for relief, the district attorney will be instructed to proceed on the judgment.

Very respectfully, yours,

H. D. GILPIN,

Solicitor of the Treasury.

To D. A. HALL, Esq., *Washington City.*

Upon a full consideration of the whole case, the committee think it advisable to allow Mr. Lord the compromise mentioned, and to release him from all further liability, on the payment of \$1,000. The peculiar circumstances of this case seem to demand the granting of such relief to the memorialist. More than twenty years have now elapsed since the debt first came to maturity. The property of the principals, which it seems was fully adequate to satisfy the claim of the United States, was suffered, with the knowledge of the collector, to go into the hands of the trustees, who, by their deed of assignment and schedule, were charged with the payment of this debt prior to all others. It seems to be established, that the memorialist, supposing the debt was fully provided for by the principals in the bond, upon failing himself, assigned all his property, with the knowledge of the collector, which was afterwards distributed among his creditors.

The common law presumes bonds and other specialities, upon which interest has not been paid for twenty years, to have been satisfied. The statute laws of many of the States raise a like presumption under a shorter period. Although against the United States this limitation cannot be pleaded, so as to be available in a court of law, yet it seems to the committee to be a strong ground for the relief asked for by the memorialist.

Another ground for relief which has suggested itself to the committee is the declaration of Mr. Lord, certified on oath, that he was assured by the then collector that the debt would be fully satisfied out of the assigned effects of Howe & Fitch. But for this assurance, he would have made provision for the payment of the debt when he assigned his own property to trustees.

Mr. Lord's character for veracity is fully established by the affidavit of Mr. Hall, heretofore given.

The attorney of the United States for the district of South Carolina, who must be supposed to be acquainted with Mr. Lord's situation and ability to satisfy the demand, states, in his letter to the Solicitor of the Treasury, that, "waiving all considerations of a public nature, which are beyond my province to enter upon, as considered merely as a question of

expediency between debtor and creditor, it is, in my opinion, expedient to accept the proposition to pay \$1,000 (cash) in discharge of the judgment against Mr. Lord; and I verily believe that, unless recourse be had to the unjust expedient of forcing his friends to relieve him from confinement, as much cannot be made by any compulsory process."

Upon this view of the case, the committee have come to the conclusion that the prosecution of the suit for the whole amount of the judgment will only embarrass Mr. Lord and distress his family, but can have no other effect.

The committee have therefore reported a bill for his relief.